Office-Supreme Court, U.S.
FILED
JAN 2 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1962

No. 715

FORD T. JOHNSON, JR.,

Petitioner,

—v.—

VIRGINIA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

ROLAND D. EALEY
M. RALPH PAGE
420 North First Street
Richmond 19, Virginia

HERMAN T. BENN
301 East Clay Street
Richmond 19, Virginia

Attorneys for Petitioner

INDEX

	PAGE
Opinions Below	1
Jurisdiction	1
Question Presented	2
Statutes and Constitutional Provisions Involved	2
Statement	3
Reasons for Granting the Writ	6
Conclusion	8
Appendix	9

TABLE OF CASES

Bailey v. Patterson, 369 U. S. 31	6
Brown v. Board of Education, 347 U. S. 483	6
Buchanan v. Warley, 245 U. S. 60	6
Burton v. Wilmington Parking Authority, 365 U. S. 715	6
Cooper v. Aaron, 358 U. S. 1	6
Derrington v. Plummer, 240 F. 2d 922 (5th Cir. 1956), cert. denied *sub nom.* Casey v. Plummer, 353 U. S. 924	7
Evers v. Dwyer, 358 U. S. 202	6
Ex parte Virginia, 100 U. S. 339	7

PAGE

Garner v. Louisiana, 368 U. S. 157 8
Gayle v. Browder, 352 U. S. 90 6

Holmes v. Atlanta, 350 U. S. 879 6

Mayor and City Council of Baltimore v. Dawson, 350 U. S. 877 6

New Orleans City Park Improvement Assn. v. Detiege, 358 U. S. 54 6

Seniors v. Arnold, 284 F. 2d 106 (5th Cir. 1960) 7
Shelley v. Kraemer, 334 U. S. 1 ..... 6, 7

Taylor v. Louisiana, 370 U. S. 154 8
Thompson v. City of Louisville, 362 U. S. 199 8
Turner v. Memphis, 369 U. S. 350 6

Virginia v. Rives, 100 U. S. 313 7

Wells v. Gilliam, 196 F. Supp. 792 (E. D. Va. 1961) 4, 7
Wood v. Vaughn, 4th Cir. No. 8689, appeal pending 7
Wood v. Virginia, Oct. Term, 1962, No. 79 7

STATUTES INVOLVED

U. S. Constitution, Fourteenth Amendment, section 1 2

28 United States Code, §1257(3) 1

Code of Virginia, 1950 (1960 Replacement Vol.), §18.1-292 ..... 2, 8

Code of Virginia, 1950 (1960 Replacement Vol.), §18.1-293 3

IN THE

Supreme Court of the United States

October Term, 1962

No. .....

FORD T. JOHNSON, JR.,

Petitioner,

—v.—

VIRGINIA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Appeals of Virginia entered in the above-entitled case on October 5, 1962.

Opinions Below

Neither the Hustings Court of the City of Richmond nor the Supreme Court of Appeals of Virginia wrote an opinion in this case.

Jurisdiction

The judgment of the Supreme Court of Appeals of Virginia was entered on October 5, 1962, and is printed in the appendix hereto, p. 9, *infra*. The jurisdiction of this Court is invoked under 28 U. S. C., §1257(3).

Question Presented

Whether petitioner's rights under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States were infringed by his conviction of contempt of court where there was no evidence of any misbehavior on the part of petitioner and was based solely on the fact that he refused to obey a direction that he move his seat from a portion of a city courtroom reserved for white persons and take a seat in a section of the courtroom set aside for Negroes.

Statutes and Constitutional Provisions Involved

1. This case involves section one of the Fourteenth Amendment to the Constitution of the United States.

2. Section 18.1-292 of the Code of Virginia 1950 (1960 Replacement Vol.) provides as follows:

> "§18.1-292. *Cases in which courts and judges may punish summarily for contempt.*—The courts and judges may issue attachments for contempt, and punish them summarily, only in the cases following:
>
> (1) Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice;
>
> (2) Violence, or threats of violence, to a judge or officer of the court, or to a juror, witness or party going to, attending or returning from the court, for or in respect of any act or proceeding had or to be had in such court;
>
> (3) Vile, contemptuous or insulting language addressed to or published of a judge for or in respect

of any act or proceeding had, or to be had, in such court, or like language used in his presence and intended for his hearing for or in respect of such act or proceeding;

(4) Misbehavior of an officer of the court in his official character;

(5) Disobedience or resistance of an officer of the court, juror, witness or other person to any lawful process, judgment, decree or order of the court. (Code 1950, §18-55; 1960, c. 358.)"

3. Section 18.1-293 of the Code of Virginia, 1950 (1960 Replacement Vol.), provides as follows:

"§18.1-293. *Power of judge of court not of record to punish for contempt.*—A judge of a court not of record shall have the same power and jurisdiction as a court of record to punish summarily for contempt, but in no case shall the fine exceed fifty dollars, or the imprisonment exceed ten days, for the same contempt. (Code 1950, §18-256; 1960, c. 358.)"

Statement

Petitioner Ford T. Johnson, Jr., a Negro resident of Richmond, Virginia, seeks review of his conviction of the crime of contempt of the Traffic Court of the City of Richmond. Petitioner was charged on a bench warrant with contempt of the Traffic Court of the City of Richmond and convicted in said court on April 27, 1962. This conviction was appealed to the Hustings Court of the City of Richmond where petitioner was tried by the court without a jury. On July 18, 1962, petitioner was convicted in the Hustings Court and sentenced to a fine of $10.00 and costs (R. 6).

At trial in the Hustings Court petitioner attempted to defend on the ground that he was being punished for violation of a racial segregation rule, but the court ruled that "the sole issue before the Court was that of contempt, and not whether the Traffic Court, which is a municipal court, was segregated." Counsel for petitioner excepted to this ruling of the court.

In the Hustings Court petitioner's counsel filed a written brief and argued orally that the conviction of petitioner for violating the segregation rule would deny petitioner's rights under the due process and equal protection clauses of the Fourteenth Amendment.

Petitioner timely filed a notice of appeal to the Supreme Court of Appeals of Virginia in which he asserted in his assignment of error that "there was no evidence of any misbehavior or disorderly conduct on his part and he was requested to move his seat because of his race and color, and that his refusal to so move constituted the real basis of the charge against him" (R. 2-3). Thereafter, petitioner filed a petition for writ of error (a certified copy of which is being filed with the record in this case) in which petitioner argued that his conviction was a violation of his rights under the due process and equal protection clauses of the Fourteenth Amendment. The State of Virginia filed a brief in opposition to the petition for writ of error in which the State argued that there was no merit in petitioner's assigned errors, relying in part upon a decision of the United States District Court for the Eastern District of Virginia which had refused to enjoin courtroom segregation as a proper exercise of judicial power, e.g., *Wells* v. *Gilliam*, 196 F. Supp. 792 (E. D. Va. 1961).

The evidence presented in petitioner's trial in the Hustings Court is summarized in a statement of facts

approved by the court (R. 7,9), no verbatim transcript of the proceedings in that court being available. The statement indicated that the clerk of the Traffic Court testified that petitioner was seated in front of him in the rear of the traffic courtroom in a section reserved for whites, that the bailiff requested petitioner to move and when petitioner refused, the bailiff reported this to the judge, who ordered that petitioner come before the bench of the court. The traffic court bailiff gave similar testimony stating that petitioner was seated on the left-hand side of the courtroom reserved for whites and refused to move. When petitioner was brought before the court he was told by the court to be seated on the right-hand side of the courtroom which was reserved for Negroes and, upon his refusal to do so when directed by the judge, he was arrested. The evidence indicated that petitioner was not using any loud and abusive language, was not creating any disturbance, and that the petitioner was arrested simply because he refused to be seated in the right-hand section of the courtroom which was reserved for Negroes when directed by the court. The assistant Commonwealth's attorney who was present gave similar testimony. Five witnesses who were present during the incident testified for the defendant that he created no disturbance and did nothing except to refuse to move his seat when directed to do so by the court. Petitioner Ford T. Johnson, Jr. testified to the same effect.

On October 5, 1962, the Supreme Court of Appeals of Virginia refused to grant a writ of error on the ground that the judgment appealed from was "plainly right" (p. 9, *infra*). The Chief Justice of the Supreme Court of Appeals stayed execution of the judgment pending disposition of a timely filed petition for certiorari in this Court.

Reasons for Granting the Writ

The decisions of the courts below are in conflict with applicable decisions of this Court holding that racial segregation enforced by state officials on state property is unconstitutional.

This is a very plain and simple case of a criminal conviction based upon petitioner's refusal to obey a racial segregation rule in a city courtroom. The record indicates without dispute that petitioner was convicted of contempt merely because he refused to obey a judge's command that he take a seat in the section of a courtroom reserved for Negroes. Petitioner was ordered by a traffic court bailiff and then by the judge to move from the section of the Richmond Traffic Court reserved for white persons, and he was arrested and convicted for refusing to take a seat in the section reserved for Negroes.

This Court has made it clear beyond any doubt that state enforced racial segregation on governmental property violates the Fourteenth Amendment to the Constitution of the United States in a wide variety of decisions. See *Brown* v. *Board of Education*, 347 U. S. 483; *Mayor and City Council of Baltimore* v. *Dawson*, 350 U. S. 877; *Holmes* v. *Atlanta*, 350 U. S. 879; *New Orleans City Park Improvement Assn.* v. *Detiege*, 358 U. S. 54; *Cooper* v. *Aaron*, 358 U. S. 1; *Evers* v. *Dwyer*, 358 U. S. 202; *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715; *Turner* v. *Memphis*, 369 U. S. 350; *Gayle* v. *Browder*, 352 U. S. 90; *Bailey* v. *Patterson*, 369 U. S. 31; *Shelley* v. *Kraemer*, 334 U. S. 1; *Buchanan* v. *Warley*, 245 U. S. 60.

It is also settled that the acts of the courts and the employees of the judicial branch of government constitute "state action" for purposes of the Fourteenth Amendment.

Shelley v. *Kraemer*, 334 U. S. 1, 14-18; *Ex parte Virginia*, 100 U. S. 339, 347; *Virginia* v. *Rives*, 100 U. S. 313, 318. The State has suggested no justification for the racial segregation practiced in this case and the fact that it took place in a courtroom does nothing to lend validity to the practice because racial segregation furthers no legitimate function of the states or their courts. Indeed, racial distinctions in courts of law are particularly inimical to the American ideal of equal justice for all which is embodied in the equal protection clause of the Fourteenth Amendment. Certainly since the Fourteenth Amendment prohibits racial segregation in a courthouse cafeteria operated by a concessionnaire as in *Derrington* v. *Plummer*, 240 F. 2d 922 (5th Cir. 1956), cert. denied, *sub nom. Casey* v. *Plummer*, 353 U. S. 924; then, *a fortiori*, such a practice must be prohibited within a courtroom at the direct command of the judge.

It is submitted that this case presents a question of public importance substantially affecting the administration of criminal justice and that notwithstanding the nominal punishment imposed upon petitioner, should be reviewed by this Court. The incidence of cases presenting similar issues demonstrates the widespread nature of courtroom segregation practices in various parts of Virginia and other jurisdictions as well. There is at least one case involving this question now pending on petition for certiorari before this Court, e.g., *Wood* v. *Virginia*, October Term, 1962, No. 79. See also, *Wells* v. *Gilliam*, *supra*; *Seniors* v. *Arnold*, 284 F. 2d 106 (5th Cir. 1960); *Wood* v. *Vaughn*, 4th Cir. No. 8689, appeal pending.

The conviction also denies due process in violation of the Fourteenth Amendment in that it was based upon no evidence of guilt. The record is clear that petitioner merely refused to obey a racial segregation rule and that there is no evidence that petitioner engaged in any conduct pro-

hibited by Va. Code §18.1-292. Petitioner's refusal to take a seat in the Negro section of the courtroom was justified since petitioner had a right to sit in a public courtroom on a nonsegregated basis. Therefore, petitioner's conduct could not be determined to be contempt of court except by the application of an unconstitutional segregation principle. To punish such conduct would be to punish for innocent acts without evidence of guilt or wrongdoing in violation of the due process clause of the Fourteenth Amendment. *Taylor* v. *Louisiana*, 370 U. S. 154; *Garner* v. *Louisiana*, 368 U. S. 157; *Thompson* v. *City of Louisville*, 362 U. S. 199.

CONCLUSION

WHEREFORE, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

ROLAND D. EALEY
M. RALPH PAGE
420 North First Street
Richmond 19, Virginia

HERMAN T. BENN
301 East Clay Street
Richmond 19, Virginia

Attorneys for Petitioner

APPENDIX

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 5th day of October, 1962.

The petition of Ford T. Johnson, Jr., for a writ of error and supersedeas to a judgment rendered by the Hustings Court of the City of Richmond on the 18th day of June, 1962, in a prosecution by the Commonwealth against the said petitioner for a misdemeanor, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said hustings court.

A copy, Teste:

H. G. TURNER
Clerk